

Register, May, 1992, No. 437, effective June 1, 1992.

(E) Chapter NR 422: CONTROL OF ORGANIC COMPOUND EMISSIONS FROM SURFACE COATING, PRINTING AND ASPHALT SURFACING OPERATIONS. NR 422.01, 422.05, 422.06, 422.07, 422.08, 422.085, 422.09, 422.10, 422.11, 422.12, 422.13, 422.155 and 422.16 as published in the (Wisconsin) Register, February, 1990, No. 410, effective March 1, 1990. NR 422.02, 422.03, 422.04, 422.14 and 422.15 as published in the (Wisconsin) Register, December, 1993, No. 456, effective January 1, 1994.

(F) Chapter NR 423: CONTROL OF ORGANIC COMPOUND EMISSIONS FROM SOLVENT CLEANING OPERATIONS. NR 423.01 as published in the (Wisconsin) Register, February, 1990, No. 410, effective March 1, 1990. NR 423.02 as published in the (Wisconsin) Register, January, 1987, No. 385, effective February 1, 1988. NR 423.03, 423.04, and 423.05 as published in the (Wisconsin) Register, December, 1993, No. 456, effective January 1, 1994.

(G) Chapter NR 424: CONTROL OF ORGANIC COMPOUND EMISSIONS FROM PROCESS LINES. NR 424.01 and 424.03 as published in the (Wisconsin) Register, February, 1990, No. 410, effective March 1, 1990. NR 424.02 as published in the (Wisconsin) Register, April, 1988, No. 388, effective May 1, 1988. NR 424.04 as published in the (Wisconsin) Register, December, 1993, No. 456, effective January 1, 1994.

(H) Chapter NR 425: COMPLIANCE SCHEDULES, EXCEPTIONS, REGISTRATION AND DEFERRALS FOR ORGANIC COMPOUND EMISSION SOURCES IN CHS. NR 419 TO 424. NR 425.01 and 425.02 as published in the (Wisconsin) Register, February, 1990, No. 410, effective March 1, 1990. NR 425.03, 425.04 and 425.05 as published in the (Wisconsin) Register, December, 1993, No. 456, effective January 1, 1994. NR 425.035 as published in the (Wisconsin) Register, January, 1993, No. 445, effective February 1, 1993.

(I) Chapter NR 439: REPORTING, RECORDKEEPING, TESTING, INSPECTION AND DETERMINATION OF COMPLIANCE REQUIREMENTS. NR 439.01 and 439.085 as published in the (Wisconsin) Register, May, 1992, No. 437, effective June 1, 1992. NR 439.02, 439.03, 439.04, 439.05, 439.055, 439.06, 439.07, 439.075, 439.09, 439.095 and 439.11 as published in the (Wisconsin) Register, December, 1993, No. 456, effective January 1, 1994. NR 439.08 as published in the (Wisconsin) Register, May, 1993, No. 449, effective June 1, 1993. NR 439.10 as published in the

(Wisconsin) Register, September, 1987, No. 381, effective October 1, 1987.

(J) Chapter NR 484: INCORPORATION BY REFERENCE. NR 484.01 as published in the (Wisconsin) Register, May, 1992, No. 437, effective June 1, 1992. NR 484.02 as published in the (Wisconsin) Register, September, 1986, No. 369, effective October 1, 1986. NR 484.03 as published in the (Wisconsin) Register, May, 1993, No. 449, effective June 1, 1993. NR 484.04, 484.05 and 484.06 as published in the (Wisconsin) Register, December, 1993, No. 456, effective January 1, 1994. NR 484.08 and 484.09 as published in the (Wisconsin) Register, October, 1992, No. 442, effective November 1, 1992.

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40 CFR Part 52

[MI34-05-6892, MI35-03-6893; FRL-5197-6]

Approval and Promulgation of Implementation Plan; Michigan, East Lansing and Genesee County NO_x Exemptions

AGENCY: United States Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is granting exemptions to the East Lansing and Genesee County ozone nonattainment areas, both of which are classified as transitional, from applicable oxides of nitrogen (NO_x) requirements found in the Clean Air Act (Act). For transitional areas the NO_x requirements which apply are conformity, both general and transportation, and nonattainment new source review. Approval of these exemption requests would relieve these areas from adopting and implementing all of the aforementioned NO_x requirements. The State of Michigan submitted NO_x exemption requests for the East Lansing and Genesee County areas on July 1, 1994 and July 8, 1994, respectively. These requests are based on the fact that ozone monitoring in these areas indicate that the average number of exceedances of the National Ambient Air Quality Standard for ozone during the most recent 3-year period, 1991 to 1993, is fewer than one per year. Given this monitoring data, Michigan petitioned for exemptions from the NO_x requirements based on a demonstration that additional reductions of NO_x would not contribute to attainment of the ozone standard in these areas.

DATES: This final rule will be effective May 30, 1995.

ADDRESSES: Written comments should be sent to: Carlton T. Nash, Chief, Regulation Development Section, Air Toxics and Radiation Branch (AT-18J), EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604-3590.

Copies of the request and the EPA's analysis are available for inspection at the following address: U.S. EPA, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604-3590. (Please telephone Douglas Aburano at (312) 353-6960 before visiting the Region 5 office.)

FOR FURTHER INFORMATION CONTACT: Douglas Aburano, Air Toxics and Radiation Branch (AT-18J), EPA, Region 5, Chicago, Illinois 60604, (312) 353-6960.

SUPPLEMENTARY INFORMATION:

I. Background

On July 1, 1994 and July 8, 1994 the State of Michigan submitted petitions to the EPA requesting that the East Lansing and Genesee County ozone nonattainment areas be exempted from the requirement to implement NO_x controls pursuant to section 182(f) of the Act. The exemption request is based upon monitoring data which demonstrate that the average number of exceedances of the ozone standard in these areas during the most recent 3-year period, 1991 through 1993, is fewer than one per year.

On December 28, 1994, EPA published a rulemaking proposing approval of the NO_x exemption petitions. During the 30 day public comment period, EPA received joint adverse comments from the Natural Resources Defense Council, Sierra Club Legal Defense Fund, and the Environmental Defense Fund and also from a private party.

II. Public Comment/EPA Response

The following evaluation summarizes each comment received and EPA's response to the comment. A more detailed discussion of the State submittal and the rationale for the EPA's action based on the Act and cited references appear in EPA's technical support documents dated August 9, 1994 and March 10, 1995.

NRDC Comments

Following is a summary of comments received from the NRDC in a letter dated August 24, 1994. After each comment is EPA's response.

NRDC Comment 1

Certain commenters argued that NO_x exemptions are provided for in two

separate parts of the Act, section 182(b)(1) and section 182(f). Because the NO_x exemption tests in subsections 182(b)(1) and 182(f)(1) include language indicating that action on such requests should take place "when [EPA] approves a plan or plan revision," these commenters conclude that all NO_x exemption determinations by the EPA, including exemption actions taken under the petition process established by subsection 182(f)(3), must occur during consideration of an approvable attainment or maintenance plan, unless the area has been redesignated as attainment. These commenters also argue that even if the petition procedures of subsection 182(f)(3) may be used to relieve areas of certain NO_x requirements, exemptions from the NO_x conformity requirements must follow the process provided in subsection 182(b)(1), since this is the only provision explicitly referenced by section 176(c), the Act's conformity provisions.

EPA Response

Section 182(f) contains very few details regarding the administrative procedure for acting on NO_x exemption requests. The absence of specific guidelines by Congress leaves EPA with discretion to establish reasonable procedures, consistent with the requirements of the Administrative Procedure Act (APA).

The EPA disagrees with the commenters regarding the process for considering exemption requests under section 182(f), and instead believes that subsections 182(f)(1) and 182(f)(3) provide independent procedures by which the EPA may act on NO_x exemption requests. The language in subsection 182(f)(1), which indicates that the EPA should act on NO_x exemptions in conjunction with action on a plan or plan revision, does not appear in subsection 182(f)(3). And, while subsection 182(f)(3) references subsection 182(f)(1), the EPA believes that this reference encompasses only the substantive tests in paragraph (1) [and, by extension, paragraph (2)], not the procedural requirement that the EPA act on exemptions only when acting on SIPs. Additionally, paragraph (3) provides that "person[s]" (which section 302(e) of the Act defines to include States) may petition for NO_x exemptions "at any time," and requires the EPA to make its determination within 6 months of the petition's submission. These key differences lead EPA to believe that Congress intended the exemption petition process of paragraph (3) to be distinct and more expeditious than the longer plan

revision process intended under paragraph (1).

Section 182(f)(1) appears to contemplate that exemption requests submitted under these paragraphs are limited to States, since States are the entities authorized under the Act to submit plans or plan revisions. By contrast, section 182(f)(3) provides that "person[s]"¹ may petition for a NO_x determination "at any time" after the ozone precursor study required under section 185B of the Act is finalized,² and gives EPA a limit of 6 months after filing to grant or deny such petitions. Since individuals may submit petitions under paragraph (3) "at any time" this must include times when there is no plan revision from the State pending at EPA. The specific timeframe for EPA action established in paragraph (3) is substantially shorter than the timeframe usually required for States to develop and for EPA to take action on revisions to a SIP. These differences strongly suggest that Congress intended the process for acting on personal petitions to be distinct—and more expeditious—from the plan-revision process intended under paragraph (1).

With respect to major stationary sources, section 182(f) requires States to adopt NO_x NSR and RACT rules, unless exempted. These rules were generally due to be submitted to EPA by November 15, 1992. Thus, in order to avoid the Act sanctions, the States would have had to submit their requests for NO_x exemptions for EPA review and rulemaking action several months before November 15, 1992. In contrast, the Act specifies that the attainment demonstrations are not due until November 1993 or 1994 (and EPA may take 12–18 months to approve or disapprove the demonstration). For marginal ozone nonattainment areas (subject to NO_x NSR), no attainment demonstration is called for in the Act. For maintenance plans, the Act does not specify a deadline for submittal of maintenance demonstrations. Clearly, the Act envisions the submittal of and EPA action on exemption requests, in some cases, prior to submittal of attainment or maintenance demonstrations.

The Act requires conformity with regard to federally-supported NO_x generating activities in relevant nonattainment and maintenance areas. However, EPA's conformity rules explicitly provide that these NO_x requirements would not apply if EPA

grants an exemption under section 182(f). In response to the comment that section 182(b)(1) should be the appropriate vehicle for dealing with exemptions from the NO_x requirements of the conformity rule, EPA notes that this issue has previously been raised in a formal petition for reconsideration of EPA's final transportation conformity rule and in litigation pending before the U.S. Court of Appeals for the District of Columbia Circuit on the substance of both the transportation and general conformity rules. The issue, thus, is under consideration within EPA, but at this time remains unresolved. Additionally, subsection 182(f)(3) requires that NO_x exemption petition determinations be made by the EPA within six months. The EPA has stated in previous guidance that it intends to meet this statutory deadline as long as doing so is consistent with the Administrative Procedures Act. The EPA, therefore, believes that until a resolution of this issue is achieved, the applicable rules governing this issue are those that appear in EPA's final conformity regulations, and EPA remains bound by their existing terms.

NRDC Comment 2

Some commenters stated that the modeling required by EPA is insufficient to establish that NO_x reductions would not contribute to attainment since only one level of NO_x control, i.e., "substantial" reductions, is required to be analyzed. They further explained that an area must submit an approvable attainment plan before EPA can know whether NO_x reductions will aid or undermine attainment.

EPA Response

This comment is directed towards exemption approvals based on photochemical grid modeling. This comment does not apply in the case of East Lansing or Genesee County because this exemption request is based on monitoring.

NRDC Comment 3

Three years of "clean" data fail to demonstrate that NO_x reductions would not contribute to attainment. EPA's policy erroneously equates the absence of a violation for one 3-year period with "attainment."

EPA Response

The EPA has separate criteria for determining if an area should be redesignated to attainment under section 107 of the Act. The section 107 criteria are more comprehensive than the Act requires with respect to NO_x exemptions under section 182(f).

¹ Section 302(e) of the Act defines the term "person" to include States.

² The final section 185B report was issued July 30, 1993.

Under section 182(f)(1)(A), an exemption from the NO_x requirements may be granted for nonattainment areas outside an ozone transport region if EPA determines that "additional reductions of [NO_x] would not contribute to attainment" of the ozone NAAQS in those areas. In some cases, an ozone nonattainment area might attain the ozone standard, as demonstrated by 3 years of adequate monitoring data, without having implemented the section 182(f) NO_x provisions over that 3-year period. The EPA believes that, in cases where a nonattainment area is demonstrating attainment with 3 consecutive years of air quality monitoring data without having implemented the section 182(f) NO_x provisions, it is clear that the section 182(f) test is met since "additional reductions of [NO_x] would not contribute to attainment" of the NAAQS in that area. The EPA's approval of the exemption, if warranted, would be granted on a contingent basis (i.e., the exemption would last for only as long as the area's monitoring data continue to demonstrate attainment).

NRDC Comment 4

A waiver of NO_x controls is unlawful if such waiver will impede attainment and maintenance of the ozone standard in separated downwind areas.

EPA Response

As a result of the comments, EPA reevaluated its position on this issue and has revised the previously issued guidance. See Memorandum, "Section 182(f) Nitrogen Oxides (NO_x) Exemptions—Revised Process and Criteria" dated February 8, 1995, for John Seitz's signature. As described in this memorandum, EPA intends to use its authority under section 110(a)(2)(D) to require a State to reduce NO_x emissions from stationary and/or mobile sources where there is evidence, such as photochemical grid modeling, showing that NO_x emissions would contribute significantly to nonattainment in, or interfere with maintenance by, any other State. This action would be independent of any action taken by EPA on a NO_x exemption request for stationary sources under section 182(f). That is, EPA action to grant or deny a NO_x exemption request under section 182(f) would not shield that area from EPA action to require NO_x emission reductions, if necessary, under section 110(a)(2)(D).

Modeling analyses are underway in many areas for the purpose of demonstrating attainment in the 1994 SIP revisions. Recent modeling data suggest that certain ozone

nonattainment areas may benefit from reductions in NO_x emissions far upwind of the nonattainment area. For example, the northeast corridor and the Lake Michigan areas are considering attainment strategies which rely in part on NO_x emission reductions hundreds of kilometers upwind. The EPA is working with the States and other organizations to design and complete studies which consider upwind sources and quantify their impacts. As the studies progress, EPA will continue to work with the States and other organizations to develop mutually acceptable attainment strategies.

At the same time as these large scale modeling analyses are being conducted, the States have requested exemptions from NO_x requirements under section 182(f) for certain nonattainment areas in the modeling domain. Some of these areas may be upwind of and impact upon downwind nonattainment areas. EPA intends to address the transport issue through section 110(a)(2)(D) based on a domain-wide modeling analysis.

Under section 182(f) of the Act, an exemption from the NO_x requirements may be granted for nonattainment areas outside an ozone transport region if EPA determines that "additional reductions of [NO_x] would not contribute to attainment of the national ambient air quality standard for ozone in the area."³ As described in section 4.3 of the Guidelines for Determining the Applicability of Nitrogen Oxides Requirements under Section 182(f), December 16, 1993 ("guidance") document, EPA believes that the term "area" means the "nonattainment area" and that EPA's determination is limited to consideration of the effects in a single nonattainment area due to NO_x emissions reductions from sources in the same nonattainment area.

Section 4.3 of the guidance goes on to encourage, but not require, States/petitioners to include consideration of the entire modeling domain, since the effects of an attainment strategy may extend beyond the designated nonattainment area. Specifically, the

³ There are 3 NO_x exemption tests specified in section 182(f). Of these, 2 are applicable for areas outside an ozone transport region; the "contribute to attainment" test described above, and the "net air quality benefits" test. EPA must determine, under the latter test, that the net benefits to air quality in an area "are greater in the absence of NO_x reductions" from relevant sources. Based on the plain language of section 182(f), EPA believes that each test provides an independent basis for receiving a full or limited NO_x exemption. Consequently, as stated in § 1.4 of the December 16, 1993 EPA guidance, "[w]here any one of the tests is met (even if another test is failed), the section 182(f) NO_x requirements would not apply or, under the excess reductions provision, a portion of these requirements would not apply."

guidance encourages States to "consider imposition of the NO_x requirements if needed to avoid adverse impacts in downwind areas, either intra- or inter-State. States need to consider such impacts since they are ultimately responsible for achieving attainment in all portions of their State (see generally section 110) and for ensuring that emissions originating in their State do not contribute significantly to nonattainment in, or interfere with maintenance by, any other State [see section 110(a)(2)(D)(i)(I)]."

In contrast, § 4.4 of the guidance states that the section 182(f) demonstration *would not be approved* if there is evidence, such as photochemical grid modeling, showing that the NO_x exemption would interfere with attainment or maintenance in downwind areas. The guidance goes on to explain that section 110(a)(2)(D) [not section 182(f)] prohibits such impacts. Consistent with the guidance in section 4.3, EPA believes that the section 110(a)(2)(D) and 182(f) provisions must be considered independently, and hence, is withdrawing the guidance presently contained in § 4.4. Thus, if there is evidence that NO_x emissions in an upwind area would interfere with attainment or maintenance in a downwind area, that action should be separately addressed by the State(s) or, if necessary, by EPA in a section 110(a)(2)(D) action. In addition, a section 182(f) exemption request should be independently considered by EPA. In some cases, then, EPA may grant an exemption from across-the-board NO_x RACT controls under section 182(f) and, in a separate action, require NO_x controls from stationary and/or mobile sources under section 110(a)(2)(D). It should be noted that the controls required under section 110(a)(2)(D) may be more or less stringent than RACT, depending upon the circumstances.

NRDC Comment 5

Comments were received regarding exemption of areas from the NO_x requirements of the conformity rules. They argue that such exemptions waive only the requirements of section 182(b)(1) to contribute to specific annual reductions, not the requirement that conformity SIPs contain information showing the maximum amount of motor vehicle NO_x emissions allowed under the transportation conformity rules and, similarly, the maximum allowable amounts of any such NO_x emissions under the general conformity rules. The commenters admit that, in prior guidance, EPA has acknowledged the need to amend a drafting error in the existing

transportation conformity rules to ensure consistency with motor vehicle emissions budgets for NO_x, but want EPA in actions on NO_x exemptions to explicitly affirm this obligation and to also avoid granting waivers until a budget controlling future NO_x increases is in place.

EPA Response

With respect to conformity, EPA's conformity rules^{4 5} provide a NO_x waiver if an area receives a section 182(f) exemption. In its "Conformity; General Preamble for Exemption From Nitrogen Oxides Provisions," 59 FR 31238, 31241 (June 17, 1994), EPA reiterated its view that in order to conform, nonattainment and maintenance areas must demonstrate that the transportation plan and TIP are consistent with the motor vehicle emissions budget for NO_x even where a conformity NO_x waiver has been granted. Due to a drafting error, that view is not reflected in the current transportation conformity rules. As the commenters correctly note, EPA states in the June 17th notice that it intends to remedy the problem by amending the conformity rule. Although that notice specifically mentions only requiring consistency with the approved maintenance plan's NO_x motor vehicle emissions budget, EPA also intends to require consistency with the attainment demonstration's NO_x motor vehicle emissions budget. However, the exemptions were submitted pursuant to section 182(f)(3), and EPA does not believe it is appropriate to delay the statutory deadline for acting on these petitions until the conformity rule is amended. As noted earlier in response to a previous issue raised by these commenters, this issue has also been raised in a formal petition for reconsideration of the Agency's final transportation conformity rule and in litigation pending before the U.S. Court of Appeals for the District of Columbia Circuit on the substance of both the transportation and general conformity rules. This issue, thus, is under consideration within the Agency, but at this time remains unresolved. The EPA, therefore, believes that until a resolution of this issue is achieved, the applicable rules governing this issue are those that appear in the Agency's final conformity

regulations, and the Agency remains bound by their existing terms.

NRDC Comment 6

The Act does not authorize any waiver of the NO_x reduction requirements until conclusive evidence exists that such reductions are counter-productive.

EPA Response

EPA does not agree with this comment since it ignores Congressional intent as evidenced by the plain language of section 182(f), the structure of the Title I ozone subpart as a whole, and relevant legislative history. By contrast, in developing and implementing its NO_x exemption policies, EPA has sought an approach that reasonably accords with that intent. Section 182(f), in addition to imposing control requirements on major stationary sources of NO_x similar to those that apply for such sources of VOC, also provides for an exemption (or limitation) from application of these requirements if, under one of several tests, EPA determines that in certain areas NO_x reductions would generally not be beneficial. In subsection 182(f)(1), Congress explicitly conditioned action on NO_x exemptions on the results of an ozone precursor study required under section 185B. Because of the possibility that reducing NO_x in a particular area may either not contribute to ozone attainment or may cause the ozone problem to worsen, Congress included attenuating language, not just in section 182(f), but throughout the Title I ozone subpart, to avoid requiring NO_x reductions where it would be nonbeneficial or counterproductive. In describing these various ozone provisions (including section 182(f), the House Conference Committee Report states in pertinent part: "[T]he Committee included a separate NO_x/VOC study provision in section [185B] to serve as the basis for the various findings contemplated in the NO_x provisions. The Committee does not intend NO_x reduction for reduction's sake, but rather as a measure scaled to the value of NO_x reductions for achieving attainment in the particular ozone nonattainment area." H.R. Rep. No. 490, 101st Cong., 2d Sess. 257-258 (1990). As noted in response to an earlier comment by these same commenters, the command in subsection 182(f)(1) that EPA "shall consider" the 185B report taken together with the timeframe the Act provides both for completion of the report and for acting on NO_x exemption petitions clearly demonstrate that Congress believed the information in the

completed section 185B report would provide a sufficient basis for EPA to act on NO_x exemption requests, even absent the additional information that would be included in affected areas' attainment or maintenance demonstrations. However, while there is no specific requirement in the Act that EPA actions granting NO_x exemption requests must await "conclusive evidence", as the commenters argue, there is also nothing in the Act to prevent EPA from revisiting an approved NO_x exemption if warranted due to better ambient information.

In addition, the EPA believes (as described in EPA's December 1993 guidance) that section 182(f)(1) of the Act provides that the new NO_x requirements shall not apply (or may be limited to the extent necessary to avoid excess reductions) if the Administrator determines that *any one* of the following tests is met:

- (1) in any area, the net air quality benefits are greater in the absence of NO_x reductions from the sources concerned;
- (2) in nonattainment areas not within an ozone transport region, additional NO_x reductions would not contribute to ozone attainment in the area; or
- (3) in nonattainment areas within an ozone transport region, additional NO_x reductions would not produce net ozone air quality benefits in the transport region.

Based on the plain language of section 182(f), EPA believes that each test provides an independent basis for receiving a full or limited NO_x exemption.

Only the first test listed above is based on a showing that NO_x reductions are "counter-productive." If one of the tests is met (even if another test is failed), the section 182(f) NO_x requirements would not apply or, under the excess reductions provision, a portion of these requirements would not apply.

Private Citizen Comment 1

The Rose Lake [monitoring] site is in a very rural area surrounded by vegetation that would preclude any accurate readings from the site, plus it is an extensive distance from a highway with a significant volume of vehicles that would generate measurable ozone levels. I also note this site is in the wrong direction by at least 45 degrees to pick up any ozone levels from the East Lansing-Lansing urbanized area.

The 220 North Pennsylvania [monitoring] site is even more protected [than the Rose Lake monitoring site], being in the heart of a residential area, with a low volume highway adjacent. It

⁴ Criteria and Procedures for Determining Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Funded or Approved under Title 23 U.S.C. of the Federal Transit Act," November 24, 1993 (58 FR 62188).

⁵ Determining Conformity of General Federal Actions to State or Federal Implementation Plans; Final Rule," November 30, 1993 (58 FR 63214).

is protected from the west and central part of the Lansing area, the prevailing wind source is from the west, and it is also located north of any industrial ozone that could be generated by several automotive plants.

EPA Response

As part of the State of Michigan's ozone monitoring networks, both the Rose Lake monitoring site and the 220 North Pennsylvania monitoring site have met the criteria established in the Code of Federal Regulations (CFR) for probe siting, as well as other EPA guidance at the time they were established. A follow-up review conducted on March 2, 1995 indicates they are still in compliance. These requirements can be found in 40 CFR part 58 Appendix E.

A review of wind speed and direction data for the summer months indicates that the Rose Lake monitor is within the area likely to be downwind of East Lansing. Furthermore, additional monitors in Genesee County are located in the area likely to see the maximum impact from the formation of ozone from emissions in the East Lansing area. In other words, the NO_x emissions from sources located in the East Lansing area will probably not generate ozone until they have reached the Genesee County area where there is an acceptable monitoring network.

Private Citizen Comment 2

Provisions of the Act and the provisions of the Intermodal Surface Transportation Efficiency Act (ISTEA) should be jointly examined by EPA and the Federal Highway Administration (FHWA) to determine the effect of not exempting the East Lansing area as has been proposed. For example, could this exemption be granted if these monitors were placed in areas of high traffic volume?

EPA Response

The hypothetical question raised can only be answered if monitors were actually placed in areas of high traffic volume. Placing a monitor in an area of high traffic volume, where high NO_x concentrations could be expected, would most likely give erroneously low ozone readings because of the fact that high NO_x concentrations have the effect of "scavenging" ozone. Therefore, there is no reason to place a monitor in an area of high traffic volume. In addition to this, as has already been mentioned in the previous response, the State of Michigan already has an approved monitoring network for this area and establishing further monitors has not been demonstrated to be warranted.

When the EPA is presented with a NO_x exemption petition, it is faced with the task of approving or disapproving such a request solely on the Clean Air Act provisions and guidance which is developed under the Clean Air Act. ISTEA does not play a role in the decision making process for NO_x exemptions.

III. Final Action

The comments received were found to warrant no changes from proposed to final action on this NO_x exemption request. Therefore, EPA is granting the East Lansing and Genesee County areas section 182(f) NO_x exemptions based upon the evidence provided by the State and the State's compliance with the requirements outlined in the Act and in EPA guidance. However, it should be noted that this exemption is being granted on a contingent basis; i.e., the exemption will last for only as long as the area's ambient monitoring data continue to demonstrate attainment of the ozone NAAQS.

Both of these areas are classified as transitional. With a classification of transitional, an area which has not been granted a NO_x exemption would be subject to general conformity, transportation conformity, and nonattainment new source review NO_x requirements. Since these petitions for exemption are applicable areawide, as opposed to source-specific, in addition to exempting these areas from the nonattainment new source review requirements for NO_x, this action also exempts these areas from the NO_x conformity requirements of the Act (see G. T. Helms, January 12, 1995 "Scope of Nitrogen Oxides (NO_x) Exemptions" memorandum).

If, subsequent to the NO_x waiver being granted, EPA determines that either area has violated the standard, the section 182(f) exemption for that area, as of the date of the determination, would no longer apply. EPA would notify the State that the exemption no longer applies, and would also provide notice to the public in the **Federal Register**. If an exemption is revoked, the State must thereafter comply with any applicable NO_x requirements set forth in the Act, such as those for NO_x NSR and conformity. The air quality data relied on for the above determinations must be consistent with 40 CFR part 58 requirements and other relevant EPA guidance and recorded in EPA's Aerometric Information Retrieval System. Additionally, the State must continue to operate an appropriate air quality monitoring network, in accordance with 40 CFR part 58, to verify the attainment status of the area.

This action will become effective on May 30, 1995.

IV. Miscellaneous

A. Applicability to Future SIP Decisions

Nothing in this action should be construed as permitting, allowing or establishing a precedent for any future request for revision to any SIP. The EPA shall consider each request for revision to the SIP in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

B. Executive Order 12866

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214-2225), as revised by an October 4, 1993 memorandum from Michael Shapiro, Acting Assistant Administrator for Air and Radiation. The OMB has exempted this regulatory action from E.O. 12866 review.

C. Regulatory Flexibility

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (5 U.S.C. 603 and 604). Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

This approval does not create any new requirements. Therefore, I certify that this action does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of the regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of the State action. The Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. U.S. E.P.A.*, 427 U.S. 246, 256-66 (1976).

Under Sections 202, 203 and 205 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must assess whether various actions undertaken in association with proposed or final regulations include a Federal mandate that may result in estimated costs of \$100 million or more to the private sector, or to State, local, or tribal governments in the aggregate.

EPA's final action will relieve requirements otherwise imposed under

the Clean Air Act and, hence does not impose any federal intergovernmental mandate, as defined in section 101 of the Unfunded Mandates Act. This action also will not impose a mandate that may result in estimated costs of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector.

D. Petitions for Judicial Review

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 26, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review, nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Oxides of nitrogen, Incorporation by reference, Intergovernmental relations, Ozone.

Dated: April 13, 1995.

Valdas V. Adamkus,
Regional Administrator.

40 CFR part 52 is amended as follows.

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671(q).

Subpart X—Michigan

2. Section 52.1174 is amended by adding paragraph (e) and (f) to read as follows:

§ 52.1174 Control strategy: Ozone

* * * * *

(e) Approval—On July 1, 1994, the Michigan Department of Natural Resources submitted a petition for exemption from the oxides of nitrogen requirements of the Clean Air Act for the East Lansing ozone nonattainment area. The submittal pertained to the exemption from the oxides of nitrogen requirements for conformity and new source review. These are required by sections 176(c) and 182(f) of the 1990 amended Clean Air Act, respectively. If a violation of the ozone standard occurs in the East Lansing ozone nonattainment area, the exemption shall no longer apply.

(f) Approval—On July 8, 1994, the Michigan Department of Natural Resources submitted a petition for exemption from the oxides of nitrogen requirements of the Clean Air Act for the Genesee County ozone nonattainment area. The submittal pertained to the exemption from the oxides of nitrogen requirements for conformity and new source review. These are required by sections 176(c) and 182(f) of the 1990 amended Clean Air Act, respectively. If a violation of the ozone standard occurs in the Genesee County ozone nonattainment area, the exemption shall no longer apply.

[FR Doc. 95–10247 Filed 4–26–95; 8:45 am]

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FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA–7615]

List of Communities Eligible for the Sale of Flood Insurance

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: This rule identifies communities participating in the National Flood Insurance Program (NFIP). These communities have applied to the program and have agreed to enact certain floodplain management measures. The communities' participation in the program authorizes the sale of flood insurance to owners of property located in the communities listed.

EFFECTIVE DATES: The dates listed in the third column of the table.

ADDRESSES: Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the NFIP at: Post Office Box 6464, Rockville, MD 20849, (800) 638–6620.

FOR FURTHER INFORMATION CONTACT: Robert F. Shea, Jr., Division Director, Program Implementation Division, Mitigation Directorate, 500 C Street, SW., room 417, Washington, DC 20472, (202) 646–3619.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and

new construction from future flooding. Since the communities on the attached list have recently entered the NFIP, subsidized flood insurance is now available for property in the community.

In addition, the Director of the Federal Emergency Management Agency has identified the special flood hazard areas in some of these communities by publishing a Flood Hazard Boundary Map (FHBM) or Flood Insurance Rate Map (FIRM). The date of the flood map, if one has been published, is indicated in the fourth column of the table. In the communities listed where a flood map has been published, Section 102 of the Flood Disaster Protection Act of 1973, as amended, 42 U.S.C. 4012(a), requires the purchase of flood insurance as a condition of Federal or federally related financial assistance for acquisition or construction of buildings in the special flood hazard areas shown on the map.

The Director finds that the delayed effective dates would be contrary to the public interest. The Director also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Considerations. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director certifies that this rule will not have a significant economic impact on a substantial number of small entities in accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., because the rule creates no additional burden, but lists those communities eligible for the sale of flood insurance.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Paperwork Reduction Act

This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, October 26, 1987, 3 CFR, 1987 Comp., p. 252.